COPY

IN THE SUPREME COURT OF THE UNITED STATES

Office - Supreme Court, U.S.
FILED
APR 26 1984
ALEXANDER L. STEVAS
CLERK

OCTOBER TERM 1983
NOS. 83-1356, 83-6156

HENNING REIMER and ROBERT CARLTON ENRIGHT,

Appellants,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

Appeal from the Court of Appeal for the State of California, Second Appellate District.

# MOTION TO DISMISS APPEAL

ROBERT H. PHILIBOSIAN
District Attorney of
Los Angeles County

DONALD J. KAPLAN
Deputy District Attorney

GEORGE M. PALMER
Deputy District Attorney

849 South Broadway, 11th Fl.
Los Angeles, California
90014-3570
Telephone: (213) 974-5917

Attorney for Appellee

SUBJECT INDEX


| | Pages |
|---|---|
| Motion to Dismiss Appeal | 1-16 |
| Opinion Below | 1 |
| Jurisdiction | 1-2 |
| Statement of Facts | 2-3 |
| Question Presented | 4 |
| Argument | |
| Since the Validity of a Federal Statute is not Drawn into Question and There has been no Decision by a State Court against the Validity of a Federal Statute this Court is Without Jurisdiction to Hear This Appeal. | 4-15 |
| Conclusion | 15-16 |

## TABLE OF AUTHORITIES CITED


| Cases | Page |
|---|---|
| Almeida-Sanchez v. United States, (1973) 413 U.S. 266 | 12 |
| Boyd v. United States (1886) 116 U.S. 616 | 6 |
| Carroll v. United States (1925) 267 U.S. 132 | 13 |
| Cox v. Texas (1906) 202 U.S. 446 | 16 |
| Fasnacht v. Frank (1875) 23 Wall. 416 | 6 |
| Gospel Army v. Los Angeles (1947) 331 U.S. 543 | 6 |
| Key v. Doyle (1977) 434 U.S. 59 | 5 |
| Klein v. United States (9th Cir. 1973) 472 F.2d 847 | 13 |
| Memphis Nat. Gas Co. v. Beeler (1941) 315 U.S. 649 | 5 |
| Pilkinton v. Pilkinton (8th Cir. 1968) 389 F.2d 32 | 5 |
| Street v. New York (1969) 394 U.S. 576 | 7 |

| Cases | Page |
|---|---|
| United States v. Bilir (4th Cir. 1979) 592 F.2d 735 | 14 |
| United States v. Brown (7th Cir. 1974) 499 F.2d 829 | 14 |
| United States v. Chavarria (5th Cir. 1974) 493 F.2d 935 | 13 |
| United States v. Glaziou (2nd Cir. 1968) 402 F.2d 8 | 14 |
| United States v. McDaniel (5th Cir. 1972) 463 F.2d 129 | 13 |
| United States v. Odland (7th Cir. 1979) 502 F.2d 148 | 13 |
| United States v. Pringle (5th Cir. 1978) 576 F.2d 1114 | 13 |
| United States v. Ramsey (19772) 431 U.S. 606 | 12 |
| United States v. Scheer (3rd Cir. 1979) 600 F.2d 5 | 10,12,13 |
| United States v. Stornini (1st Cir. 1971) 443 F.2d 833 | 13 |
| United States v. 37 Photographs (1971) 402 U.S. 363 | 13 |

| Codes and Statutes | Pages |
|---|---|
| Title 19 U.S.C. | |
| § 482 | 7,10,11 |
| § 1582 | 10 |
| Title 28 U.S.C. | |
| § 1257(1) | 2,4,5 |

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM 1983

NOS. 83-1356, 83-6156

HENNING REIMER and ROBERT CARLTON ENRIGHT,

Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

MOTION TO DISMISS APPEAL

OPINION BELOW

The opinion of the Court of Appeal for the State of California, Second Appellate District, is not reported in a published opinion. However, it is designated as People v. Robert Carlton Enright and Henning Reimer, 2d Crim. No. 43532, and is also reproduced as Appendix A to appellant's briefs on appeal.

JURISDICTION

Appellants claim that jurisdiction is conferred upon this Court to hear this

case based upon 28 U.S.C., section 1251 (1). As we shall show, this claim is without merit.

STATEMENT OF FACTS

The evidence is undisputed. The only witnesses were federal customs officers whose testimony was accepted as truthful by the trial court. Their testimony revealed that defendants, who appeared to be traveling together, arrived at Los Angeles International Airport on an international flight from Lima, Peru. Upon disembarking from the aircraft, they proceeded to the customs area of the airport. Each was carrying hand luggage. At the primary inspection point their passports were checked and their names were entered in the "Treasury Enforcement Computer System" ("TECS") to determine whether there were any outstanding arrest warrants or any

other reason for detaining them. The computer retrieved information indicating that two persons, with names exactly matching those of appellants, together were suspected of possessing cocaine in the past and had possibly been so charged, but that neither had been convicted of such an offense. Other than the computer match, there was nothing suspicious about appellants' behavior or dress. Upon this basis, a search of appellants' hand luggage was conducted which revealed substantial quantities of cocaine in their possession.

The trial court suppressed this evidence upon motion of appellants and dismissed the case. On appeal by the People, the order of suppression was reversed and the Supreme Court of California denied a hearing.

## QUESTION PRESENTED

The question presented is whether 28 U.S.C., section 1257(1) confers jurisdiction upon this Court to hear this case and pass upon the merits of the appeal.

## ARGUMENT

### SINCE THE VALIDITY OF A FEDERAL STATUTE IS NOT DRAWN INTO QUESTION AND THERE HAS BEEN NO DECISION BY A STATE COURT AGAINST THE VALIDITY OF A FEDERAL STATUTE THIS COURT IS WITHOUT JURISDICTION TO HEAR THIS APPEAL.

### A.

28 U.S.C., section 1257(1) provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by

the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

* * *

It has long been the rule that mandatory jurisdictional statutes such as 28 U.S.C., section 1257(1), authorizing appeals as of right to the Supreme Court, will be given a narrow construction in the absence of clear Congressional intent to the contrary. (Key v. Doyle (1977) 434 U.S. 59, 65 [54 L.Ed.2d 238, 98 S.Ct. 280], Rehn. den. 434 U.S. 1025 [54 L.Ed.2d 773, 8 S.Ct. 753]; Memphis Nat. Gas Co. v. Beeler (1941) 315 U.S. 649, 651 [86 L.Ed. 1090]; Pilkinton v. Pilkinton (8th Cir. 1968) 389 F.2d 32, 33.)

Accordingly, there being no treaty involved, it is clear from the statute that this Court may review this case only where "is drawn in question the validity of a . . . statute of the United States and the decision is against its validity." (Emphasis added.)[1/]

Moreover, not only must appellants show that a federal statute was necessarily passed upon and found constitutionally invalid by the highest court of the state rendering the decision (Cox v. Texas (1906) 202 U.S. 446 [50 L. Ed. 1099, 1102]; Fashnacht v. Frank (1875) 23 Wall. 416 [23 L.Ed. 81, 82]),

---

1. We concur with appellants' contention that this decision by the Court of Appeal is now final within the meaning of 28 U.S.C., section 1257(1), because the California Supreme Court has denied a hearing. (Gospel Army v. Los Angeles (1947) 331 U.S. 543, [91 L.Ed. 1662, 67 S.Ct. 1428].)

but also it must be shown that the federal question presented for review in this Court is substantial. (Street v. New York (1969) 394 U.S. 576, 582 [22 L. Ed.2d 572, 89 S.Ct. 1354].)

B.

Appellants have insisted from the inception of this case that 19 U.S.C., section 482 governed the searches in question and that under its "reasonable cause to suspect" test, the searches were invalid.[2/] The trial court adopted

---

2. 19 U.S.C., section 482 provides:

Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever

(Footnote continued on next page.)

this position and found the searches defective. Upon the People's appeal, the Court of Appeal reversed, reasoning as follows:

> The justification for inspection of respondent's handluggage was not dependent upon the information obtained by the customs inspectors from the Treasury Enforcement Computer System.

---

(Footnote 2 continued from page 6.)

found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial. R.S. § 3061.

(Cf. United States v. Gallagher (4th Cir. 1977) 557 F.2d 1041, 1043, cert. den. Gallagher v. United States (1977) 434 U.S. 870.) The reasonableness of the inspection of the contents of respondents' handluggage was established solely by the undisputed evidence that respondents had arrived in the United States from a foreign country at an established port of entry, and were subjected to a permissible, reasonable search of the luggage. (United States v. Sandler, supra, 644 F.2d at 1165-1168; cf. People v. Leyba (1981) 29 Cal.3d 591, 597.)

At no time has any state court passed upon the question of the validity of any United States statute nor has any court -- particularly the Court of Appeal -- determined that a United States statute is constitutionally or otherwise invalid. Indeed, as appellants' briefs in this Court make clear, the issues presented by this appeal are which of two statutes[3/] govern the

---

3. Appellee contended in the California Court of Appeal that 19 U.S.C., section 1582 controls actual or functional border searches, whereas 19 U.S.C., section 482 controls customs searches away from a border but within a customs district. (See United States v. Scheer, (3d Cir. 1979) 600 F.2d 5.) Section 1582 provides:

The Secretary of the Treasury may prescribe regulations for the search of persons and baggage and he is authorized to employ female inspectors for the examination and search of persons of their own sex; and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government under such regulations. June 17, 1930, c. 497, Title IV, § 582, 46 Stat. 748.

searches herein and whether some quantum of suspicion is constitutionally mandated before a routine, nonintrusive border search may be undertaken. Neither 19 U.S.C., section 482 nor 19 U.S.C., section 1582 were analyzed to determine their constitutional validity. They are assumed to be constitutionally valid and the Court of Appeal did not treat them otherwise. In fact, it is clear the Court of Appeal did not even consider such an issue.[4]

C.

It is likewise clear that no substantial federal question is involved here. The constitutional validity of a federal statute is not at issue. No state court has even questioned the validity of a federal statute. Implicit

---

4. This is understandable since none of the parties presented such issue to the court.

in the decision of the Court of Appeal is the conclusion that the searches in question were valid under both federal statutes, supra.

This conclusion is in accord with the long-standing principle of law that all persons and their personal effects, crossing our international borders[5/] and entering the United States from a foreign country are subject to a routine nonintrusive search. (United States v. Ramsey (1977) 431 U.S. 606, 619 [52 L.2d. 617, 97 S.Ct. 1972]; Almeida-Sanchez v. United States, supra; United

---

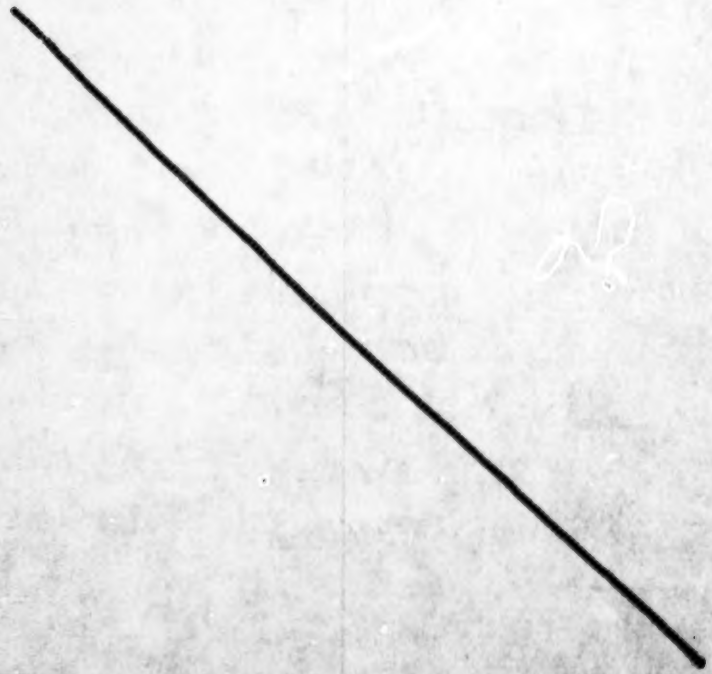
5. The undisputed facts of the instant case demonstrate that Los Angeles International Airport was a functional international border because petitioners Enright and Reimer had just arrived in the United States on an international flight from Peru. (Aleida-Sanchez v. United States (1973) 413 U.S. 266, 272-273, [37 L.Ed.2d 596, 93 S.Ct. 2535] [international airport]; United States v. Scheer (3d Cir. 1979) 600 F.2d 5 [JFK International Airport].)

States v. Thirty-Seven Photographs (1971) 402 U.S. 363, 376 [28 L.Ed.2d 822, 91 S.Ct. 1400]; Carroll v. United States (1925) 267 U.S. 132, 153-154 [69 L.Ed. 543, 45 S.Ct. 280]; Boyd v. United States (1886) 116 U.S. 615, 623 [29 L.Ed. 746, 6 S.Ct. 524].) Thus, a search based on mere subjective suspicion or even on a random basis is lawful. (United States v. Scheer, supra; United States v. Pringle (5th Cir. 1978) 576 Fed.2d 1114, 1117; United States v. Odland (7th Cir. 1974) 502 F.2d 148, 150-151, cert. denied 419 U.S. 1088 [42 L.Ed.2d 680, 95 S.Ct. 679]; Klein v. United States (9th Cir. 1973) 472 F.2d 847, 849; United States v. McDaniel (5th Cir. 1972) 463 F.2d 129, 132; United States v. Stornini (1st Cir. 1971) 443 F.2d 833, 835.)[6/] Indeed,

---

6. But, see e.g., United States v. Chavarria (5th Cir. 1974) 493 F.2d 935, 937, for a contrary view.

the mere fact of crossing the border raises "reasonable cause to suspect" such persons may be in possession of contraband or dutiable goods. (United States v. Bilir (4th Cir. 1979) 592 F.2d 735, 741; United States v. Brown (7th Cir. 1974) 499 F.2d 829, 833; United States v. Glaziou (2nd Cir. 1968) 402 F.2d 8, 12.)



Accordingly, it must be concluded that this Court lacks jurisdiction under 28 U.SC., section 1257(1) to pass upon the merits of this appeal.

D.

The foregoing reasoning also leads to the conclusion that this appeal should not be treated as a petition for writ of certiorari. No substantial federal question is presented and, further, the Court of Appeal and the Supreme Court for the State of California have passed upon the merits of appellants' claims and found them wanting. Discretionary review by this Court would not be appropriate in these circumstances.

CONCLUSION

For the foregoing reasons, it must be concluded that this Court lacks jurisdiction to pass upon the merits of

this appeal. Accordingly, the appeal by appellants should be dismissed.

Respectfully submitted,

ROBERT H. PHILIBOSIAN
District Attorney of
Los Angeles County

By

DONALD J. KAPLAN
Deputy District Attorney
Appellate Division

GEORGE M. PALMER
Deputy District Attorney

Attorney for Appellee

## DECLARATION OF SERVICE BY MAIL

The undersigned declares under penalty of perjury that the following is true and correct:

I am over eighteen years of age, not a party to the within cause and employed in the Office of the District Attorney of Los Angeles, California 90014-3296. On the date of execution hereof I served the attached document by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in the County of Los Angeles, California, addressed as follows:

HON. EDWARD A. HINZ, HR.
Judge of the Superior Court
Department SW District "K"
825 Maple Avenue
Torrance, CA 90503

JOHN P. KENOSIAN, Esq.
Attorney at Law
7080 Hollywood Blvd., Suite 307
Los Angeles, CA 90028

KIM H. PEARMAN, Esq.
Attorney at Law
7080 Hollywood Blvd., Suite 307
Los Angeles, CA 90028

S. CLARK MOORE
Sr. Asst. Atty. Gen.
3580 Wilshire Blvd.
Los Angeles, CA 90010

Executed on April 25, 1984, at Los Angeles, California.